

JS 44 (Rev. 12/07, NJ 5/08)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> TIMOTHY HOOVER		<b>DEFENDANTS</b> NCO FINANCIAL SYSTEMS, INC.																				
<p>(b) County of Residence of First Listed Plaintiff _____</p> <p>(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)</p> <p>Tara L. Patterson, Esquire Kimmel &amp; Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888</p>		<p>County of Residence of First Listed Defendant _____</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>																				
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4																			
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5																			
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6																			
<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)																						
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<b>V. ORIGIN</b> (Place an "X" in One Box Only)				Appeal to District Judge from Magistrate Judgment																		
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation																	
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <b>15 U.S.C SECTION 1692</b>																						
Brief description of cause: <b>Fair Debt Collection Practices Act</b>																						
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMANDS	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																		
<b>VIII. RELATED CASE(S)</b>		(See instructions): JUDGE		DOCKET NUMBER																		
Explanation:  <b>03/04/11</b> <i>Tara Patterson</i> DATE SIGNATURE OF ATTORNEY OF RECORD																						

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1005 Herman Ave, Orlando FL 32803

Address of Defendant: 507 Prudential Road Thorham PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes

No

Yes

No

Does this case involve multidistrict litigation possibilities?

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes

No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes

No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes

No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes

No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY)**

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)

7.  Products Liability

8.  Products Liability — Asbestos

9.  All other Diversity Cases

(Please specify)

10.  Social Security Review Cases

11.  All other Federal Question Cases 15 U.S.C. § 1692  
(Please specify)

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 3-4-11

Attorney-at-Law

Tara L. Patterson

88343

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3-4-11

Attorney-at-Law

Tara L. Patterson

88343

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Timothy Hoover

CIVIL ACTION

v.  
NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

3-4-11

Date

215-5410-8688

Telephone

Tara L. Patterson

Attorney-at-law

877-788-2864

FAX Number

Timothy Hoover

Attorney for

t.patterson@creditlaw.com

E-Mail Address

UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY HOOVER, )  
Plaintiff )  
v. )  
NCO FINANCIAL SYSTEMS, INC., )  
Defendant )  
Case No.: )  
COMPLAINT AND DEMAND FOR )  
JURY TRIAL )  
(Unlawful Debt Collection Practices)

## COMPLAINT

TIMOTHY HOOVER ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

## **JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has its principal office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

## PARTIES

6 Plaintiff is a natural person residing in Orlando, Florida.

7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

8. Defendant is a debt collection company with its corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3 12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.

16 13. In enacting the FDCPA, the United States Congress found that "[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors," which "contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.

22 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
23 collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection  
24 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

3

4 **FACTUAL ALLEGATIONS**

5 15. Defendant and others it retained began in or around May of 2010 constantly and  
6 continuously placing harassing and abusive collection calls to Plaintiff seeking and demanding  
7 payment for an alleged consumer debt of another person, a "Pintip Hoover."

8 16. Upon information and belief, the alleged debt Defendant was seeking to collect  
9 arose out of transactions, which were primarily for personal, family, or household purposes.

10 17. Defendant and others it retained placed calls on Plaintiff's telephone.

11 18. Defendant identified the debtor as "Pintip Hoover", who is Plaintiff's ex-wife.

12 19. Plaintiff spoke with Defendant and others it retained on at least five (5) occasions  
13 to advise that "Pintip Hoover" did not live with him, that he divorced "Pintip Hoover" in 2006,  
14 that he has not associated with "Pintip Hoover" since 2006, that Defendant had the wrong  
15 telephone number, and not to contact him anymore.

16 20. Despite Plaintiff's instructions not to contact him, Defendant and others it  
17 retained still continued to contact Plaintiff in its attempts to collect a debt.

18 21. During one conversation in May 2010, Defendant asked if "Ms. Hoover was in?"

19 22. When Plaintiff inquired as to which Ms. Hoover Defendant was looking for,  
20 Defendant responded, "Pintip Hoover. That is your wife isn't it?"

21 23. Plaintiff informed Defendant that "Pintip Hoover" was his ex-wife and that he  
22 had been divorced since 2006.

23 24. Defendant then asked Plaintiff how he could contact "Pintip Hoover".

1       25. When Plaintiff responded that he did not know how to contact "Pintip Hoover"  
2 and requested to know the name of the person he was speaking with, Defendant's representative  
3 hung up the telephone.

4       26. In June 2010, Defendant again contacted Plaintiff and asked to speak with  
5 "Pintip".

6       27. Plaintiff informed Defendant that "there was no "Pintip here" and requested to  
7 know who was calling.

8       28. Defendant's representative confirmed that he was calling on behalf of Defendant.

9       29. Plaintiff stated to Defendant's representative: "I told you 100 times I was  
10 divorced from her in 2006."

11       30. Again Defendant's representative asked if Plaintiff knew how to contact "Pintip  
12 Hoover", to which Plaintiff responded "No and please stop calling me."

13       31. In July 2010, Plaintiff had a conversation with a representative of Defendant  
14 similar to his June 2010 conversation; however, this time when Plaintiff requested to speak with  
15 a supervisor, Defendant's representative hung-up on Plaintiff.

16       32. Finally, in another July 2010 conversation, Plaintiff made another request for  
17 Defendant to cease harassing him in connection to his ex-wife's debt, to which Defendant's  
18 representative immediately told Plaintiff to "shut your mouth, I will be the one asking the  
19 questions."

20       33. Again Plaintiff demanded to speak with a supervisor and Defendant's  
21 representative hung-up on him.

22       34. Defendant's frequent telephone calls have been particularly troubling to Plaintiff,  
23 who is disabled, and must get out of bed each time the telephone rings, which is very difficult

1 for him in his condition.

2 35. Further, Defendant's constant telephone calls have also put a strain on Plaintiff's  
3 new marriage, as his current wife does not appreciate repeated debt collection telephone calls to  
4 their residence, especially for a debt belonging to Plaintiff's ex-wife.

5 36. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of  
6 privacy.

7 37. Defendant failed to investigate or verify contact information prior to and after  
8 calling Plaintiff.

9 38. Defendant failed to update its records to avoid further harassment of Plaintiff.

11 **CONSTRUCTION OF APPLICABLE LAW**

12 39. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
13 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
14 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
15 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
16 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
17 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

18 40. The FDCPA is a remedial statute, and therefore must be construed liberally in  
19 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
20 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
21 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
22 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
23

1 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
2 2002).

3 41. The FDCPA is to be interpreted in accordance with the "least sophisticated"  
4 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
5 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
6 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
7 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
8 and the fact that a false statement may be obviously false to those who are trained and  
9 experienced does not change its character, nor take away its power to deceive others less  
10 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
11 ensures protection of all consumers, even naive and trusting, against deceptive collection  
12 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
13 collection notices. Clomon, 988 F. 2d at 1318.

15

16 **COUNT I**  
17 **DEFENDANT VIOLATED THE**  
18 **FAIR DEBT COLLECTION PRACTICES ACT**

19 42. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
20 more of the following ways:

- 21 a. Defendant violated of the FDCPA generally;  
22 b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that  
23 Pintip Hoover owed a debt;  
24 c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than  
25 once in connection for the collection of a debt for another individual;

- 1 d. Defendant violated § 1692c(b) of the FDCPA by communicating with
- 2 Plaintiff about a debt allegedly owed by Pintip Hoover;
- 3 e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in
- 4 connection with the collection of an alleged debt;
- 5 f. Defendant violated § 1692d(2) of the FDCPA by using obscene or profane
- 6 language or language the natural consequence of which is to abuse the hearer
- 7 or reader;
- 8 g. Defendant violated § 1692d(5) of the FDCPA, when it caused Plaintiff's
- 9 telephone to ring repeatedly or continuously with the intent to harass, annoy
- 10 or abuse Plaintiff, specifically making constant hang-up calls in order to
- 11 harass Plaintiff;
- 12 h. Defendant violated § 1692f of the FDCPA by using unfair and
- 13 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 14 and
- 15 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
- 16 and failed to comply with the FDCPA.

18 38. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff  
19 in the sum of Plaintiff's actual damages, statutory damages, and attorney's fees and costs.

21 WHEREFORE, Plaintiff, TIMOTHY HOOVER, respectfully prays for a judgment as  
22 follows:

- 23 a. Declaratory judgment that Defendant's conduct violated the FDCPA.
- 24 b. All actual compensatory damages suffered pursuant to 15 U.S.C. §
- 25 1692k(a)(1);

- 1 c. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
- 2 15 U.S.C. § 1692k(a)(2)(A);
- 3 d. All reasonable attorneys' fees, witness fees, court costs and other litigation
- 4 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 5 e. Any other relief deemed appropriate by this Honorable Court.

6

7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, TIMOTHY HOOVER, demands a jury trial in  
9 this case.

10 RESPECTFULLY SUBMITTED,

11  
12 DATED: 03/04/11 KIMMEL & SILVERMAN, P.C.

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